

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING**

**October 22, 2020**

**5:00 P.M.**

**Meeting Will Be Conducted Via Zoom Conference**

**AGENDA**

**PUBLIC PARTICIPATION**

The public may observe and/or participate in this meeting many ways.

**OBSERVE:**

- To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10

- To observe the meeting by video conference, please click on this link: You are invited to a Zoom webinar.

When: October 22, 2020 5:00PM Pacific Time (US and Canada)

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION FULL BOARD SPECIAL MEETING October 22, 2020 5:00 PM

Please click the link below to join the webinar:

<https://zoom.us/j/93602177645>

Or iPhone one-tap :

US: +16699006833,,93602177645# or +13462487799,,93602177645#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592

Webinar ID: 936 0217 7645

International numbers available: <https://zoom.us/u/adf0iazelm>

**COMMENT:**

There are two ways to submit public comments.

- To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Instructions on how to “Raise Your Hand” is available at:

[https://support.zoom.us/hc/en-us/articles/205566129 - Raise-Hand-In-Webinar.](https://support.zoom.us/hc/en-us/articles/205566129-Raise-Hand-In-Webinar)

- To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “\*9” to speak when Public

Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted.  
Please unmute yourself by pressing \*6.

If you have any questions, please email [Bkong-brown@oaklandca.gov](mailto:Bkong-brown@oaklandca.gov).

## **HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

### **1. CALL TO ORDER**

### **2. ROLL CALL**

### **3. CONSENT ITEMS**

a) Approval of Board minutes from October 8, 2020

### **4. OPEN FORUM**

### **5. APPEALS\***

a) T19-0451, Kaiser v. Goldstone

b) T19-0186, T19-0235, Didrickson v. Commonwealth

c) T19-0202, Pacheco v. Newsome

### **6. ACTION ITEMS**

### **7. INFORMATION AND ANNOUNCEMENTS**

a. Legislative Updates (Office of the City Attorney)

### **8. COMMITTEE REPORTS AND SCHEDULING**

### **9. ADJOURNMENT**

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As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

**Accessibility.** To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email [sshannon@oaklandca.gov](mailto:sshannon@oaklandca.gov) or call (510) 238- 3715 or California relay service at 711 by 5:00 P.M. one day before the meeting.

\*Staff appeal summaries will be available at the Rent Program website and the Clerk's office at least 72 hours prior to the meeting pursuant to O.M.C. 2.20.080.C and 2.20.090

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantonese, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a [sshannon@oaklandca.gov](mailto:sshannon@oaklandca.gov) o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語,  
粵語或國語翻譯服務, 請在會議前五個工作天電郵 [sshannon@oaklandca.gov](mailto:sshannon@oaklandca.gov)  
或致電 (510) 238-3715 或 711 California relay service.

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**R. HOUSING, RESIDENTIAL RENT AND RELOCATION  
BOARD FULL BOARD SPECIAL MEETING**

**October 8, 2020**

**5:00 P.M.**

**VIA ZOOM CONFERENCE**

**OAKLAND, CA**

**MINUTES**

**1. CALL TO ORDER**

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order at 5:00 p.m. by Chair, R. Stone.

**2. ROLL CALL**

<b>MEMBER</b>	<b>STATUS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
T. HALL	Tenant	X		
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			X
Vacant	Tenant Alt.			
R. STONE	Homeowner	X		
A. GRAHAM	Homeowner	X		
S. DEVUONO- POWELL	Homeowner			X
E. LAI	Homeowner Alt.	X		
J. MA POWERS	Homeowner Alt.			X
K. FRIEDMAN	Landlord	X		
T. WILLIAMS	Landlord	X		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.			X

**Staff Present**

Kent Qian  
Chanee Franklin Minor  
Barbara Kong-Brown

Deputy City Attorney  
Program Manager, Rent Adjustment Program  
Senior Hearing Officer, Rent Adjustment  
Program

### 3. CONSENT ITEMS

- a) Approval of Board Minutes from September 24, 2020, Full Board Special Meeting

E. Lai asked if a Board member could vote to approve the minutes if one was not present at a Board meeting. K. Qian responded that one can vote to approve the minutes even if the Board member is absent from the Board meeting.

T. Hall stated that she moved to affirm the hearing decision in L19-0037, Pan Pacific Corp. LLC v. Tenants. R. Auguste moved to approve the 9/24/20 Rent Board minutes with the correction. A. Graham seconded.

The Board voted as follows:

**Aye:** T. Hall, R. Auguste, R. Stone, A. Graham, K. Friedman, T. Williams

**Nay:** None

**Abstain:** E. Lai

The motion carried.

### 4. OPEN FORUM

James Vann, Oakland Tenants' Union

- Is pleased that member R. Auguste raised the issue of "Neutral" members and the term does not define the 3d category of Board members who are not tenants or owners.
- The tenant at the last Board meeting commented that his petition be withdrawn, that he did not understand what he was doing, and the hearing officer should have explained to the tenant what that word meant.

Hannah Flanery, Tenant Alternate Representative, Rent Board

- Supports action item 6a regarding the use of the term "Neutral" to identify Board members who are not landlord or tenant representatives; labeling certain Board members as "Neutral" and others as not muddies the waters.

Michael Kaufman, Tenant

- Has a question about the video for the Zoom meeting. H. Grewal responded that the meeting is audio only. R. Stone stated this is pursuant to City policy.

Paul Kranz, Attorney

- Represents a tenant and wanted to be sure that the Board can hear him.

Jackie Zaneri, Alliance of Californians for Community Empowerment

- Supports the proposal to change the term “Neutral” and wants to amend the board if an organization or law firm represents people in front of the Rent Board.

Gregory McConnell

- Is fine with Zoom audio for the Rent Board hearing

## 5. APPEALS

a) T18-0018, Sund v. Vernon Street Apartments LP aka Flynn Family Holdings

Appearances: Paul Kranz Tenant Representative  
Gregory McConnell Owner Representative

P. Kranz requested another continuance of this appeal on the grounds that part of the Board packet was improperly copied. He stated that a number of pages were blacked out or illegible and the attachment to his appeal brief which consisted of part of the transcript of the hearing, was not attached. He emailed C. Franklin Minor who responded that she would get back to him and he has not heard from her.

C. Minor Franklin stated there was not enough time to discuss the representative’s request and the Board has the authority to grant a continuance.

B. Kong-Brown stated that she granted a continuance for the last board meeting based on P. Kranz’s representation that certain pages were illegible or blacked out. She reviewed the pages cited by P. Kranz and noted these pages were legible and were not blacked out. She found additional pages that were illegible and asked staff to correct those pages. She omitted the transcript to the appellant’s brief on the grounds that it exceeded 25 pages.

G. McConnell stated that he was lambasted by the tenant representative when he requested a continuance, who also did not serve him the documents for his review. He would like the opportunity to review the tenant’s documents so he can also provide transcript excerpts.

After Board discussion A. Graham moved to grant a continuance in

order to have a clear and legible board packet and stated he was open to a friendly amendment for inclusion of the transcript. R. offered a friendly amendment to include the entire transcript of the hearing. E. Lai seconded the friendly amendment, which was accepted.

The Board voted as follows:

**Aye:** R. Auguste, A. Graham, R. Stone, E. Lai, K. Friedman  
**Nay:** T. Hall, T. Williams  
**Abstain:** None

The motion carried.

b) T17-0221, Kaufman v. Nguyen

Appearances:	James Vann	Tenant Representative
	Jennifer Nguyen	Owner

This is an appeal from a Board Remand Decision. The tenant representative argued that the tenant moved into his unit in July 2014. His first RAP notice was served in 2016. A prior decision in T16-0482 stated that the rent increases for 2014 and 2015 were invalid. When the new owner acquired the property, this established a new base rent and the rent increases for 2014 and 2015 were moot.

The owner contended that the Banked rent increases were permitted by the Rent Ordinance.

The Board remanded the case to the Hearing Officer with specific instructions regarding the issue of law regarding accrual of Banking where there was a prior improperly served rent increase notice and whether a proper service of a rent increase notice entitles the owner to a full Banking increase.

The Hearing Officer's Remand Decision stated that the failure to provide the RAP notice in prior years does not affect the owner's right to a full Banking increase.

After arguments and rebuttal made by both parties, Board questions to the parties and Board discussion R. Stone moved to affirm the Hearing Decision. K. Friedman seconded the motion.

The Board voted as follows:

**Aye:** T. Hall, R. Auguste, A. Graham, R. Stone, K. Friedman, E. Lai, T. Williams  
**Nay:** None  
**Abstain:** None

The motion was approved by consensus.

c) T19-0196, Yoquelet v. Oaktown Properties

Appearances:	Corey Yoquelet	Tenant
	Dima Tsenter	Owner

The Hearing Officer denied the tenant petition on the grounds that the subject property was exempt from the Rent Ordinance as a single-family residence.

The tenant contended that the Hearing Officer's decision is not supported by substantial evidence, and he was denied the opportunity to introduce documentary exhibits and testimony of prior tenancies, as well as the opportunity to offer rebuttal evidence to impeach the owner.

The owner contended that the subject property is a single-family residence and was in excellent condition at the time of the rental in April 2016. There are no maintenance requests from the tenants, no outstanding violations against the owner, and no prior tenant evictions in the prior tenancy.

After arguments and rebuttal made by both parties, Board questions to the parties and Board discussion, E. Lai moved to affirm the Hearing Decision. T. Hall seconded the motion.

The Board voted as follows:

**Aye:** T. Hall, K. Friedman, T. Williams, E. Lai

**Nay:** A. Graham, R. Stone

**Abstain:** R. Auguste

The motion carried.

## 6. ACTION ITEMS

### a) Nomenclature

R. Auguste proposed to discontinue the practice of referring to Board members who are not tenants or owners as "neutral" as all Board members are neutral. Referring to such Board members as "neutral" gives a false impression. The third category for Board members is someone who is not a tenant or property owner. She proposed that the third category of representative be designated as "At-large" or "Undesignated."

After Board discussion R. Auguste moved to discontinue the practice of using the word "Neutral" for Board members and



to refer to themselves as “Member” or “Commissioner”, and for a quorum to refer to the third category of Board member as “Undesignated member.” T. Hall offered a friendly amendment to exclude the use of “Commissioner” and seconded the motion.

The Board voted as follows:

**Aye:** R. Auguste, T. Hall, R. Stone, T. Williams, E. Lai,

**Nay:** K. Friedman

**Abstain:** A. Graham

The motion carried.

R. Auguste will reach out to the Mayor’s office about which term the Mayor wishes to use when referring to the board members who are not property owners or tenants.

## 7. INFORMATION AND ANNOUNCEMENTS

### a) Legislative Updates

K. Qian reported that the Efficiency Ordinance was amended at the 1<sup>st</sup> reading. Each party now has 6 minutes for presentation instead for 15 minutes. The Board will still have unlimited time for questions and can adjust the time for good cause. The Ordinance provides for a single appeal officer in a simple case. This was amended to limit this to cases where the parties did not appear or did not respond to a petition. The Ordinance also requires the parties to serve petitions on the opposing party. This task was performed by staff prior to this Ordinance. The purpose of the Ordinance is to improve efficiency. The Amendments also provide that RAP staff will serve the documents if they exceed 25 pages. The 2<sup>nd</sup> reading is scheduled for October 20, 2020 and will be effective immediately upon 6 votes of the City Council passing the Ordinance. If there are 5 votes the Ordinance goes into effect 7 days later.

### b) Regulations to Implement TPO Ordinance

K. Qian stated they are preparing edits to the proposed regulations before presentation to the Ad Hoc Committee and hope to get a draft next week. R. Stone requested a copy of the proposed regulations. C. Franklin Minor stated that a

sublease addendum has been drafted and will be posted on the RAP website by the end

c) Outreach Activities

C. Franklin Minor stated that there were several outreach highlights and copies of the materials will be attached for the next Board meeting

**8. COMMITTEE REPORTS AND SCHEDULING**

a) None

**9. ADJOURNMENT**

The HRRRB meeting was adjourned at 8:14 p.m. by Board Chair R. Stone.


## CHRONOLOGICAL CASE REPORT

Case No.: T19-0451  
Case Name: Kaiser v. Goldstone Management  
Property Address: 4421 Gilbert Street, Unit 122 Oakland, CA  
Parties: Jean Kaiser (Tenant)  
Mr. Goldstone (Owner Representative)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 1, 2019
No Owner Response filed	-----
Administrative Decision mailed	December 24, 2019
Owner Appeal filed	January 10, 2020

T19-0451 MS/EL

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank H. Ogawa Plaza, Ste. 5313 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: OCT -1 2019 <b>TENANT PETITION</b>
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**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed.

**Please print legibly**

Your Name JEAN KAISER	Rental Address (with zip code) 4421 GILBERT ST OAKLAND 94611 No. 122	Telephone: ( )
		E-mail: mo
Your Representative's Name no representative at this time	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) Mrs. Doldstone	Mailing Address (with zip code) I have only his office address which is ↓	Telephone:
		Email: telia is the no. of Tim Hansen VA
Property Manager or Management Co. (if applicable) Doldstone Mgmt	Mailing Address (with zip code) 82 Shattuck Sq Berkeley, Ca. 94704	Telephone: who sent notice of the increase
		Email: See enclosed letter from him

Number of units on the property: 16

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input checked="" type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase. <i>the notice of increase did not say whether or not it was approved.</i>

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: in the late 1960s Initial Rent: \$ 140 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 1960s NEVER. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
8-26-2019	9-1-19	\$ 91.19	\$ 930.25	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

I also received a phone notice of increase of 43.95 from the bldg.

mgr. a few days before 9-1-19  
000013

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

Handwritten: there was one maybe 20 years ago. I no longer have this info

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?
Have you lost services originally provided by the owner or have the conditions changed?
Are you claiming any serious problem(s) with the condition of your rental unit?

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
3) when you notified the owner of the problem(s); and
4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

IV. VERIFICATION: The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Handwritten signature: Jean Kaiser
Tenant's Signature

Handwritten date: 9-20-19
Date

Empty rectangular box for additional information or notes.

Empty rectangular box for additional information or notes.

RECEIVED

OCT -3 2019

Sept. 28, 2019

Rent Adjustment Program

250 Frank Ogawa Plaza

Suite 6301

Oakland, Ca. 94612-2034

On Sept. 26 I mailed you a petition for a hearing due to improper rent increase by my landlord. I neglected to include my request to schedule the hearing in the morning. This is because I am 90 years old & use a wheelchair due to old polio. I have very limited energy in the afternoon and in fact take a nap every afternoon.

Thank you,

Frank Kaiser  
4421 GILBERT #122  
Oakland Ca. 94611

000015



**Goldstone Management Inc.**

August 26, 2019

Re: Revised invoice, 2019 Oakland CPI Rent Adjustment

Enclosed please find an adjusted invoice for the 2019 Oakland CPI rent adjustment. I regret that the earlier invoice did not include the adjustment and apologize for any confusion this may have caused. If you have already written and mailed your September 1, 2019 rent check from the prior invoice, the adjusted amount will be reflected on the October 1, 2019 balance due line of the invoice. Please contact me if you have any questions or concerns. Thank you.

Tim Hansen

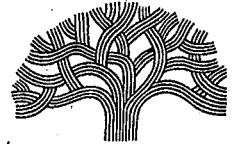
VP – Goldstone Management Inc.

82 Shattuck Sq. Berkeley CA 94704

Cell

000016





Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## **ADMINISTRATIVE DECISION**

**CASE NUMBER:** T19-0451, Kaiser v. Goldstone Management

**PROPERTY ADDRESS:** 4421 Gilbert Street, Unit 122  
Oakland, CA

**PARTIES:** Jean Kaiser, Tenant  
Mr. Goldstone, Owner Representative

## **SUMMARY OF DECISION**

The Tenant's petition is granted.

## **INTRODUCTION**

**Reason for Administrative decision:** An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and there are no material facts in dispute. Therefore, an administrative decision, without a hearing, is being issued.

## **BACKGROUND**

On October 1, 2019, the tenant filed a petition contesting a telephonic rent increase, indicating that the rent was increased from \$1255.60 to \$1299.55, effective September 1, 2019. The petition alleged that the tenant had not received a RAP Notice at inception or concurrent with the Notice of Increase; and that the rent increase was not approved the Rent Adjustment Program or exceeded the CPI. The petition states under penalty of perjury that the tenant has never received the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice).

The owner did not file a timely response. To date, no response to the tenant's petition has been received.

### **RATIONALE FOR ADMINISTRATIVE DECISION**

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy<sup>1</sup> and, together with any notice of rent increase or change in the terms of a tenancy.<sup>2</sup>

The tenant's petition states under penalty of perjury that they did not receive the RAP Notice at the inception of the tenancy. Likewise, the petition states that the tenant did not receive a RAP Notice with the contested rent increases. Accordingly, the tenant's rent increases are invalid, and the rent remains \$1,255.60.

### **ORDER**

1. Petition T19-0369 is granted.
2. The rent remains \$1,255.60.
3. The Hearing scheduled for February 3, 2020, is canceled.

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**Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly**

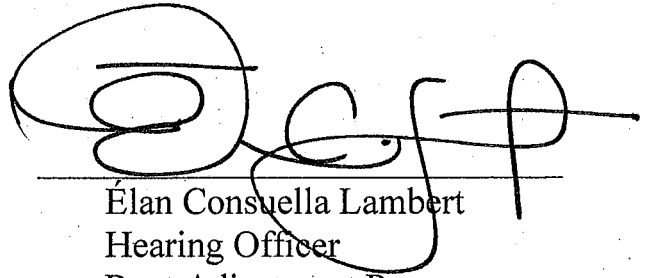
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<sup>1</sup> O.M.C. § 8.22.060(A)

<sup>2</sup> O.M.C. § 8.22.070(H)(1)(A)

completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: December 23, 2019



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Elan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T19-0451**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Administrative Decision

**Owner**

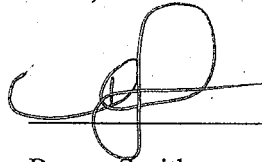
Goldstone Management  
82 Shattuck Square  
Berkeley, CA 94704

**Tenant**

Jean Kaiser  
4421 Gilbert Street Unit 122  
Oakland, CA 94611

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **December 24, 2019** in Oakland, CA.



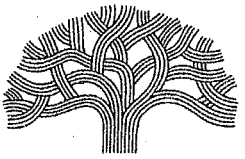
Raven Smith

Oakland Rent Adjustment Program

000020

MS, EL

RENT ADJUSTMENT PROGRAM

 <b>CITY OF OAKLAND</b>	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. 2020 JAN 10 PM 3:15
	<b><u>APPEAL</u></b>	

<b>Appellant's Name</b> Goldstone Management		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 4421 Gilbert Street, Unit 122 Oakland, Ca 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 82 Shattuck Sq. Berkeley, Ca 94704		<b>Case Number</b> T19-0451	<b>Date of Decision appealed</b> December 24, 2019
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

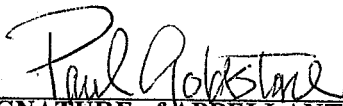
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 1

**• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •**

I declare under penalty of perjury under the laws of the State of California that on 1/10, 2020, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Jean Kaiser
<b>Address</b>	4421 Gilbert Street, Unit 122
<b>City, State Zip</b>	Oakland, Ca 94611
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	1/10/2020
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

## **IMPORTANT INFORMATION:**

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

**For more information phone (510) 238-3721.**

**Case Number: T19-0451**

**Petitioner: Jean Kaiser**

**Landlord Explanation for Appeal**

When we sent out 2019 the rent increase notice, we attached a copy of the "RAP Notice". It also provided the website address of the Rent Adjustment information which the petitioner could verify that her rent increase did not exceed the annual CPI adjustment.

By the tenant filing this petition the tenant clearly acknowledges receiving the notice. The tenant's rent payment history also acknowledges the tenant received a Notice of Increase with the RAP Notice in the past and is aware of the program.

Additionally, please refer to Page 2, item #II of tenant's petition the tenant checkmarked 'no' in the column/box "Are you Contesting this Increase in this Petition".

Respectfully,

Goldstone Management

000024



## CONSOLIDATED CHRONOLOGICAL CASE REPORT


Case No.: T19-0186, T19-0235  
Case Name: Didrickson v. Commonwealth Company  
Property Address: 2230 Lakeshore Ave., Unit #7, Oakland, CA  
Parties: Glenda Didrickson, (Tenant)  
Carlos Didrickson, (Tenant)  
Allen Sam, (Property Manager)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 5, 2019
Tenant Petition filed	March 26, 2019
Owner Response filed	July 11, 2019
Hearing Decision mailed	December 23, 2019
Tenant Appeal filed	January 13, 2020
Owner Response to Appeal filed	January 15, 2020
Tenant Narrative filed	January 15, 2020

T19-0186 PC/MA

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 2019 FEB -5 AM 11:50
	<b><u>TENANT PETITION</u></b>	

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name Carlos & Glenda Didrickson	Rental Address (with zip code) 2230 Lakeshore Av #7 Oakland Ca 94606	Telephone:
		E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) Commonwealth Co Ted Dang	Mailing Address (with zip code) 1305 Franklin St Oakland Ca 94612 Suite 500	Telephone:
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 8

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000)
(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
(g) The increase I am contesting is the second increase in my rent in a 12-month period.
(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
✓ (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: December 2006 Initial Rent: \$ 2,500.<sup>00</sup> /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Nov. 2012 If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

T13, T14, T15, T16, T17, T18

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Blenda Didriksen  
Tenant's Signature Carls D. D.

Feb 5, 2019  
Date

[Empty rectangular box]

- 1) gas heater not working from Nov. 2018 to Jan 31, 2019 (repaired 1-31-19)
- 2) patio not replaced - patio boards removed Feb 2017, with NO legal permit.
- 3) bedroom vent leaks rainwater when heavy rain.
- 4) patio door handle broken, patio door frame separates from Glass.

[Empty rectangular box]

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CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
APR 11 5 49 PM '17

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the opportunity to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

\_\_\_\_\_  
Tenant's Signature Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

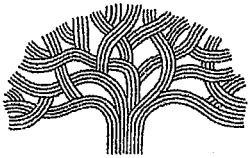
**File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

RC/MA



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

For date stamp  
RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 JUL 11 PM 2:10

**PROPERTY OWNER**  
**RESPONSE**

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your response being rejected or delayed.

**CASE NUMBER T 19-0186**

Your Name <i>421 Associates</i>	Complete Address (with zip code) <i>1305 Franklin Ste #500 Oakland CA 94612</i>	Telephone:
		Email: <del>_____</del>
Your Representative's Name (if any) <i>Allen Sam</i>	Complete Address (with zip code) <i>1305 Franklin Ste #500 Oakland CA 94612</i>	Telephone: <i>510-832-2628</i>
		Email:
Tenant(s) Name(s) <i>Carlos &amp; Blenda Didrickson</i>	Complete Address (with zip code) <i>2230 Lakeshore Ave #7 Oakland CA 94612</i>	
Property Address (If the property has more than one address, list all addresses)		Total number of units on property

Have you paid for your Oakland Business License? Yes  No  Lic. Number: \_\_\_\_\_  
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes  No  APN: \_\_\_\_\_  
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 8/15/12

Is there more than one street address on the parcel? Yes  No .

Type of unit (Circle One): House / Condominium/ Apartment, room, or live-work

**I. JUSTIFICATION FOR RENT INCREASE** You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
7/1/18	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are justifying additional contested increases, please attach a separate sheet.

**II. RENT HISTORY** If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on 12/15/06.

The tenant's initial rent including all services provided was: \$ 2500 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?

Yes  No  I don't know

If yes, on what date was the Notice first given? 9/17/2012

Is the tenant current on the rent? Yes  No

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
5/14/18	7/1/18	\$ 2983.31	\$ 3084.74	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3/25/17	7/1/17	\$ 2699.14	\$ 2983.31	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

### III. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). If claiming exemption under **Costa-Hawkins**, please answer the following questions on a separate sheet:

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.

On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** less than 30 days.

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.

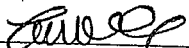
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

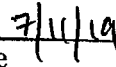
### IV. DECREASED HOUSING SERVICES

If the petition filed by your tenant claims **Decreased Housing Services**, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

### V. VERIFICATION

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

  
\_\_\_\_\_  
Property Owner's Signature

  
\_\_\_\_\_  
Date



**IMPORTANT INFORMATION:**

**Time to File**

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

**File Review**

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

**Mediation Program**

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

**If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff member at no charge.

\_\_\_\_\_

Property Owner's Signature

\_\_\_\_\_

Date

# Commonwealth Companies

– REAL ESTATE –

BRE#: 0442390

July 11<sup>th</sup>, 2019

City of Oakland  
Rent Adjustment Program  
PO Box 70243  
Oakland, CA 94612

## RE: T19-0186

Commonwealth Companies recently received a notice from the City of Oakland dated June 26<sup>th</sup>, 2019 regarding Case No. T19-0186, notifying us that one of our residents, Carlos & Glenda Didrickson has filed a petition to the Rent Adjustment Board alleging a decrease in housing services, specifically citing the four issues below:

1. Gas Heater not working from Nov. 2018 – Jan. 2019
2. Patio not replaced – patio boards removed Feb. 2017 with no legal permit
3. Bedroom vent leaks rainwater when heavy rain
4. Patio door handle broken, patio door frame separates from glass

Our position for each issue:

**1. Gas Heater not working from Nov. 2018 – Jan. 2019**

By tenant's own admission, we successfully repaired the gas heater. Coordination between residents and contractors proved to be difficult due to a variety of reasons:

- a. Resident's insistence on being present for all work.
- b. Resident's refusal to communicate via email or phone.
- c. Ownership not receiving notice of malfunction from tenant in a timely manner. Claims malfunction in November, but verbal notice from manager not received until December, and written notice not received until January.
- d. Difficulty in aligning time when tenants would be present and contractor's availability.
- e. Multiple visits required. First contractor we hired was unable to fix the heater, which exacerbated the issue. We were able to find another contractor who was able to fix the heater.

**2. Patio not replaced**

The City of Oakland inspected the patio years ago and ruled that it was not up to code. Current owner was unaware that the previous owner installed the patio without any permits. This issue was addressed in Case No. T17-0327, ruling in favor of the tenant. Effective July 1, 2017, tenant was granted an ongoing rent decrease of \$298.33 unless the patio was properly rebuilt. The owner has honored the ruling of the Rent Adjustment Board since the day it took effect.

**3. Bedroom vent leaks rainwater when heavy rain**

MNJ Roofing and AT Mechanical independently address the roofing and venting systems in the past to complete repairs. In April 2019, our in-house repairman inspected the unit and verified that the bedroom vent was in working order and no longer leaking. We received no follow-up from the tenants since that time.

**4. Patio door handle broken, patio door frame separates from glass**

Quoting from the hearing decision dated February 6<sup>th</sup>, 2019 on case T18-0305:

**"In T17-0327, the Hearing Officer conducted a site inspection again held that the repair was sufficient and the door operated far better than it was in prior inspection. This claim was denied in T17-0327 and the decision became final when the tenants dismissed their appeal on October 10<sup>th</sup>, 2018."**

In April 2019, our in-house repairman inspected the unit and verified that the patio door and the handle was functioning without issue. We received no follow-up from the tenants since that time.

We hope that after reviewing the evidence, as well as all previous judgments between Commonwealth and the Didricksons, that the Hearing Officer will come to the conclusion that we have been acting in good faith and complying with each and every part of the previous rulings.

# Commonwealth Companies

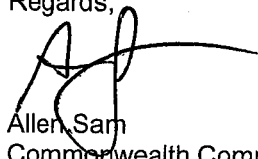
– REAL ESTATE –

BRE#: 0442390

We request that the owner be paid for the outstanding rent amount of \$2847.10 (not including any late fees or interest accrued). Attached to the letter is a chart of rent payments as of January 2018, which includes all the adjustments provided from the rulings of T17-0327, T18-0238, T18-0305, and the pending case of T19-0186. We feel that this back rent is properly owed to us based on prior judgments, but have held off on pursuing the difference while this case is being appealed again, and do not wish to complicate the matter until the Rent Adjustment Board confirm the previous Final Decision.

We also request the City of Oakland consider issuing sanctions to the Didricksons to prevent any further attempts at appealing the Rent Adjustment Board's ruling regarding the patio. This multi-year dispute has already been heard and ruled on multiple times, with several in-person mediation sessions between both parties in front of a hearing officer. The Didricksons continue to appeal and act as if these previous hearings were somehow unjust, despite any new evidence or rationale. At this point it's just a waste of time and resources for all parties, and shows a complete lack of respect towards the process and judgments of the Rent Adjustment Board.

Regards,



Allen Sam  
Commonwealth Companies

	Base Rent	Patio Adjustment	Other Adjustments	Rent Owed	Resident Payment	Notes	Difference
Jan-18	\$2,983.31	\$298.33	\$167.03	\$2,517.95	\$2,517.95	past rent overpayment adj.	\$0.00
Feb-18	\$2,983.31	\$298.33	\$167.03	\$2,517.95	\$2,517.54	past rent overpayment adj.	\$0.41
Mar-18	\$2,983.31	\$298.33	\$167.03	\$2,517.95	\$2,517.54	past rent overpayment adj.	\$0.41
Apr-18	\$2,983.31	\$298.33	\$167.03	\$2,517.95	\$2,517.54	past rent overpayment adj.	\$0.41
May-18	\$2,983.31	\$298.33	\$167.03	\$2,517.95	\$2,517.54	past rent overpayment adj.	\$0.41
Jun-18	\$2,983.31	\$298.33	\$167.03	\$2,517.95	\$2,517.54	past rent overpayment adj.	\$0.41
Jul-18	\$3,084.74	\$298.33	\$167.03	\$2,619.38	\$2,517.54	past rent overpayment adj.	\$101.84
Aug-18	\$3,084.74	\$298.33	\$167.03	\$2,619.38	\$2,517.54	past rent overpayment adj.	\$101.84
Sep-18	\$3,084.74	\$298.33	\$167.03	\$2,619.38	\$2,517.54	past rent overpayment adj.	\$101.84
Oct-18	\$3,084.74	\$298.33	\$149.17	\$2,637.24	\$2,517.54	tarp ruling reimbursement	\$119.70
Nov-18	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
Dec-18	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
Jan-19	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
Feb-19	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
Mar-19	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
Apr-19	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
May-19	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
Jun-19	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
Jul-19	\$3,084.74	\$298.33		\$2,786.41	\$2,517.54		\$268.87
							<b>\$2,847.10</b>

NOTE: July 2018 base rent increase of 3.4% from \$2983.31 to \$3084.74 per the City of Oakland allowable CPI adjustment

T19:0235 PC/MA



CITY OF OAKLAND

**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 250 Frank H. Ogawa Plaza, Ste. 5313  
 Oakland, CA 94612-0243  
 (510) 238-3721

For date stamp.  
 26 PM 2:21

**TENANT PETITION**

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed.

**Please print legibly**

Your Name Carlos & Glenda Oidrickson	Rental Address (with zip code) 2230 Lakeshore Av. Oakland Cal #7 94606	Telephone: _____ E-mail: _____
Your Representative's Name	Mailing Address (with zip code)	Telephone: _____ Email: _____
Property Owner(s) name(s) Commonwealth Inc Ted Dang	Mailing Address (with zip code) 1305 Franklin St. Oak Cal Suite 500 94612	Telephone: _____ Email: _____
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: _____ Email: _____

Number of units on the property: 8

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

<input type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: Dec 2006 Initial Rent: \$ 2500.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Nov 2012 If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>8-13-18</u>	<u>UNKNOWN</u>	\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

T-13 - T-14 - T-15 - T-16 - T-17 - T-18

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No  
Have you lost services originally provided by the owner or have the conditions changed?  Yes  No  
Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Carly Didi  
Tenant's Signature

3-26-19  
Date

[Empty rectangular box]

[Empty rectangular box]

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, 250 Frank H. Ogawa Plaza, Ste. 5313, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; or through the **RAP Online Petitioning System:** <https://apps.oaklandca.gov/rappetitions/Petitions.aspx>. For more information, call: (510) 238-3721.

### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_



The following is verification of health and safety violations previously reported on numerous petitions with the Oakland Rent Adjustment Board.

Please refer to the following pages of written report of health and safety violations at 2230 Lakeshore Ave Oakland Ca 94606 unit 7

- 1) no legal permit to remove the patio deck
- 2) no legal permit to install heating duct on the roof above bedroom.
- 3) Oakland building inspector found the following violations
  - 3a) water dripping from heater duct in the bedroom
  - 3b) sliding patio frame handle broken, and the frame shows a large gap - door frame separates from glass door
  - 3c) main electrical breaker trips if the stove (oven) and microwave or dishwasher and tv are on
  - 3d) no smoke/carbon dioxide detector in living room.

These have been on going violations that have been reported on numerous petitions and verified by a qualified Oakland Building Inspector

We are requesting that any past increase previously allowed during these violation issues be reexamined based on these issues never having been properly repaired/replaced.

I Requested A Dismissal of Appeal on Oct 10 2018 After speaking To the CO OWNER of the property of 2230 Lakeshore Ave, JOHN WILLIAMS ABOUT REPLACING THE PATIO DECK AND HE SAID THAT HE WOULD TALK TO TED DANG. AND STILL NO PATIO DECK REPLACED AS OF THIS DATE

Carls Daduke Blendalidinkeen

WE ARE IN

MAILED TO Wrong APT ... sent TO APT 5 --- APT 7

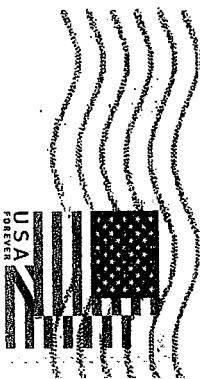
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**Commonwealth Companies**

REAL ESTATE  
1305 Franklin Street, Suite 500  
Oakland, CA 94612

OAKLAND CA 94612

04 JAN 2019 PM 3 1

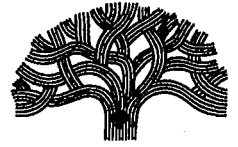


Carlos & Glenda Pedersen  
2230 Lakeshore Ave #5  
Oakland CA 94606



94606-105105





DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND,

Housing and Community Development  
Department Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## **HEARING DECISION**

**CASE NUMBER:** T19-0186, Didrickson v. Commonwealth Company  
T19-0235, Didrickson v. Commonwealth Company

**PROPERTY ADDRESS:** 2230 Lakeshore Ave., Unit #7, Oakland, CA

**DATE OF HEARING:** September 24, 2019

**DATE OF DECISION:** December 20, 2019

**APPEARANCES:** Glenda Didrickson, Tenant  
Carlos Didrickson, Tenant  
Allen Sam, Property Manager

### **SUMMARY OF DECISION**

The Tenant Petition is denied.

### **CONTENTIONS OF THE PARTIES**

On February 5, 2019, the tenants filed a Tenant Petition, alleging code violations and decreased housing services. On March 26, 2019, the tenants filed another Tenant Petition alleging additional decreased housing services.

On July 11, 2019, the owner filed a timely response, denying the allegations.

### **ISSUES**

(1) Have the tenants' housing services decreased, and if so, by what amount?

### **EVIDENCE**

#### **Background and Rent History**

The tenants' unit is located in a residential building consisting of eight (8) units. The tenants moved into their unit in December of 2006, at an initial monthly rent of \$2,500.00. The tenants filed several petitions in the past that addressed the same issues raised in the current petition, including setting the base rent, reduction for certain

decreased housing services and ongoing reduction due to the loss of the deck.<sup>1</sup> Official Notice is taken of the prior cases and Orders in those cases will be honored.

### RAP Notice

It is undisputed that the tenants received their first notice of the existence of the Rent Adjustment Program (RAP Notice) in 2012 and they also received the RAP Notice with subsequent rent increases.

### Prior Hearing Decisions Regarding Decreased Housing Services

At the time of the hearing, the parties agreed that the loss of the wooden patio deck, issues with the patio door and handle, and heating vent leak were previously raised, addressed, and adjudicated in cases T15-0374, T16-0175, T17-0327, T18-0238, and T18-0305. As such, the only remaining issues to be addressed are as follows: (1) Gas Heater; (2) CO/Smoke Detector; and (3) Electric Breaker.

Gas Heater: The tenants testified that their gas heater stopped working in November of 2018, and wasn't repaired until January 31, 2019. They reported the issue to the owner in November of 2018, and the owner attempted repairs but the gas heater stopped working again. A new contractor was hired and the gas heater was repaired on January 31, 2019.

The property manager testified that he was not notified of the issue with the gas heater until December of 2018. He further testified that the repair required multiple visits and the delay in completing repairs was due to difficulty coordinating repairs with the tenants. He confirmed that the gas heater was repaired on January 31, 2019.

CO/Smoke Detectors: The tenants testified that an Inspector from the City of Oakland Code Enforcement Services conducted an inspection of the subject unit on March 11, 2019, and noted that a CO/Smoke detector was missing in the living room. The owner installed a CO/Smoke detector in July of 2019, but installed it on the support beam instead of the ceiling.

The property manager testified that he was not aware that the CO/Smoke detector in the living room was missing until the inspection on March 11, 2019. Prior to that, it was his understanding that all CO/Smoke detectors were in working order. Once he became aware of the issue, he attempted to coordinate installation of a new CO/Smoke detector on multiple occasions but the tenants were unresponsive and it was very difficult to schedule a time with them to install the CO/Smoke detector. He was eventually able to coordinate repairs and a CO/Smoke detector was installed in the living room and in the hallway in July of 2019.

Electric Breaker: The tenants testified that the electric breaker short circuits if the stove, dishwasher, and television are all on at the same time. The property manager

<sup>1</sup> T15-0374, T16-0175, T17-0327, T18-0238 and T18-0305.

testified that his electrician looked at the problem and told him that the tenants are overloading the circuit breaker. If the tenants don't turn everything on at once, they won't have any issues with the circuit breaker.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Decreased Housing Services**

Under the Oakland Rent Ordinance, a decrease in housing services is considered an increase in rent<sup>2</sup> and may be corrected by a rent adjustment.<sup>3</sup> However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or a service that was provided and is no longer being provided or one that is required to be provided in a contract between the parties. The tenants have the burden of proving decreased housing services by a preponderance of the evidence.

In a decreased services case, the tenants must establish they have given the owner notice of the problems and the opportunity to fix the problems before they are entitled to relief.

**Gas Heater:** The property manager testified credibly that he was notified of this issue in December of 2019 and the gas heater was repaired in January of 2019. The property manager was responsive and any delay in completing repairs was due to difficulty coordinating and communicating with the tenants. The property manager's response was reasonable and compensation for this claim is denied.

**CO/Smoke Detectors:** A CO/Smoke detector was installed in the living room after the property manager was notified that it was missing. The property manager testified credibly that the delay in installing the CO/Smoke detector was due to difficulty communicating and coordinating with the tenants, who insisted on being present for all repairs. The issue has been resolved and compensation for this claim is denied.

**Electric Breaker:** The tenants testified that the circuit breaker short circuits if multiple appliances are on at the same time. The property manager testified credibly that the tenants are overloading the circuit breaker, and if they stop turning everything on at once, the circuit breaker won't short circuit. This issue does not affect the habitability of the unit, and compensation for this claim is denied.

## **ORDER**

1. The Tenant Petitions T19-0186 and T19-0235 are denied.
2. The claims for decreased housing services are denied.

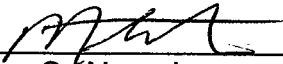
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<sup>2</sup> O.M.C. §8.22.070(F)

<sup>3</sup> O.M.C. §8.22.110(E)

**Right to Appeal: This decision is the final decision of the Rent Adjustment Program.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: December 20, 2019

  
\_\_\_\_\_  
Maimoona S. Ahmad  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T19-0186; t19-0235**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Hearing Decision

**Owner**

Ted Dang, 421 Associates  
1305 Franklin Street Suite 500  
Oakland, CA 94612

**Owner Representative**

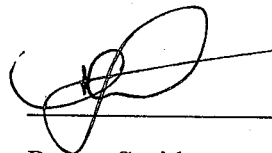
Allen Sam  
1305 Franklin Street #500  
Oakland, CA 94612

**Tenant**

Carlos & Glenda Didrickson  
2230 Lakeshore Avenue Unit 7  
Oakland, CA 94606

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **December 23, 2019** in Oakland, CA.

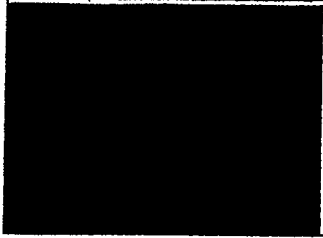


Raven Smith

Oakland Rent Adjustment Program

000047

CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. 2020 JAN 13 AM 9:50
	<b><u>APPEAL</u></b>	

Appellant's Name CARLOS Glenda Didrickson		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 2230 Lakeshore Ave #7 OAKLAND, CA. 94606		
Appellant's Mailing Address (For receipt of notices) SAME		Case Number T19-0186 T19-0235
		Date of Decision appealed 1-13-2020
Name of Representative (if any)		Representative's Mailing Address (For notices)

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

PLEASE Refer to Letter Dated 1-14-20

For more information phone (510) 238-3721.



- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

(PLEASE Refer to Letter Dated 1-14-20)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: \_\_\_\_\_.

**• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •**

I declare under penalty of perjury under the laws of the State of California that on \_\_\_\_\_, 20\_\_\_\_, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	TED DANG 421 ASSOCIATES
<b>Address</b>	1305 FRANKLIN ST. SUITE 500
<b>City, State Zip</b>	OAKLAND, CA. 94612
<b>Name</b>	Allen Sam
<b>Address</b>	1305 FRANKLIN ST. ST 500
<b>City, State Zip</b>	OAKLAND, CA 94612

Carlos Diederich Blenky Dick	1-13-20
---------------------------------	---------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

BOYE

W Please Refer to Letter Dated 1-14-20 which Refers to  
Me trying to get copies of AUDIO FOR THE SEPT 24 HEARING IN 2014  
AND Discrepancies in the Hearing Decision - WAS Denied to  
SPEAK About UNResolved ISSUES Along with the BUILDING INSPECTOR'S  
Report on Health & Safety Violations

Carls Rind

1-13-20

**Commonwealth Management**  
- REAL ESTATE -  
BRE#: 00821583

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2020 JAN 15 AM 11:57

January 15<sup>th</sup>, 2020

City of Oakland  
Rent Adjustment Program  
PO Box 70243  
Oakland, CA 94612

RC/MA

**RE: T19-0186 & T19-0235 Appeal Response**

421 Associates recently received a copy of an appeal dated January 13<sup>th</sup>, 2020 from Carlos & Glenda Didrickson, protesting the decisions of previous cases T19-0186 & T19-0235. They allege the decisions made by the Rent Adjustment Board is not supported by substantial evidence.

Ironically, their appeal lacks in anything substantive to respond to.

On the appeal that we received dated 1-13-2020, they attached a letter dated 1-13-2020 asking the reader to refer to "the letter dated 1-14-2020" – which was not included. They either forgot to or decided not to include "the letter dated 1-14-2020". It is also possible that the letter wasn't written yet (assuming that the dates on all the documents are accurate). There seemed to be plenty of space on the letter attached for Carlos & Glenda Didrickson to state their case, but they elected not to.

421 Associate's position on the matters previously adjudicated by the RAP Board remain consistent. We continue to comply with all the terms of the previous decisions, and will defend ourselves against further appeals.

421 Associates expects that Carlos & Glenda Didrickson will continue to appeal as long as they have the ability to, as they have had for several years now. We reluctantly participate out of respect for the RAP Board's procedural process, but we hope the RAP Board can review the progression of this dispute over time, and see how silly and redundant having to deal with this situation has become.

Regards,

  
Allen Sam  
Commonwealth Management

PS: We have attached our copy of the appeal sent to us by the Didricksons for your review.

January 14, 2020

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

RC/MA

Ms. Chanée F. Minor  
Manager/Director  
Oakland Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, Calif. 94612

2020 JAN 15 PM 1:03

Regarding: Appeal T19-0186  
Appeal T19-0235

Dear Ms. Minor:

In response to my tenant petitions submitted in the above-referenced matters, your office sent me a copy of the hearing decision denying both petitions.

In seeking to appeal that decision, however, I have experienced a number of administrative obstacles and logistical road blocks, making my appeal efforts extremely difficult.

For that reason, I am contacting you for your assistance. First, the proof of service is dated December 23, 2019 and was actually mailed on ~~December~~ December 26, 2019. However, I did not receive the decision until December 30, 2019.

On that day, I contacted Mr. Robert Costa and asked that he arrange for me to receive copies of both petitions, the landlord responses and an audio copy of the hearing proceedings. Mr. Costa then informed me that I should contact Ms. Maxine Visaya for that purpose.

Again, on the very same day, I contacted Ms. Visaya via voice mail and e-mail, requesting the above-referenced documents and a copy of the audio disk recording. Later, not having heard anything from Ms. Visaya for several days, I sent another voice mail message and e-mail notification regarding my urgent need to receive this documentation.

Finally, on January 7, 2020, Ms. Visaya sent me an e-mail notification, indicating that she no longer handled the requested duties and urged me to contact Ms. Cindy Jay for assistance. Consequently, on that day I contacted Ms. Cindy Jay via voice mail and e-mail. And after getting no response from her, I contacted her again two days later.

On the morning of Friday, January 10, 2020, I still had not been contacted regarding my request; so I decided to come down to your office. Facing a filing deadline of January 13, 2020, I now had only three days to file my appeal.

After coming down to the RAP office, I informed your front desk of my dilemma and my urgent need to obtain the requested documents and audio. However, instead of receiving help I was turned away. Specifically, I was informed that the office was closed and that they could not assist me.

000052

Frustrated and confused, I called Mr. Robert Costa and informed him that I still had received no assistance. Eventually, a few hours later, Mr. Costa contacted me and asked me to return to the RAP office. Later that afternoon, I came in, paid for everything and left. However, an hour later, I discovered that the audio disk was blank. I tested the disk on my laptop, home entertainment system and my car stereo system-nothing! I then contacted Ms. Cindy Jay.

At about 4:20 p.m., Ms. Cindy Jay informed me that she would prepare another copy for me and that I could come in on Monday, January 13, 2020. She explained further that it was just too late to give me the disk on that day.

Of course, January 13, 2020 was my official filing deadline. What does this all mean? From December 30, 2019 through January 13, 2020, a period of two weeks, I could not get anyone in your department to honor my reasonable request for document/record copies.

It also means that it was not until January 13, 2020, my actual filing deadline, that I finally received everything I had previously requested. Accordingly, given this unexpected and unfortunate set of circumstances and events ~~and events~~, I am requesting additional time (fifteen days) in order to provide my submissions to the Board/Rent Adjustment Program.

Your consideration and prompt attention to this request are greatly appreciated.

Sincerely,



Carlos Didrickson

## CHRONOLOGICAL CASE REPORT


Case No.: T19-0202  
Case Name: Pacheco v. Newsome  
Property Address: 6518 Outlook Avenue, Unit 1, Oakland, CA  
Parties: Sherri Pacheco, (Tenant)  
Nicolas Donelly, (Owner)  
Kevin Newsome, (Property Owner Representative)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 21, 2019
Owner Response filed	August 7, 2019
Hearing Decision mailed	January 23, 2020
Owner Appeal filed	February 11, 2020

T19-0202 Re/BC

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank H. Ogawa Plaza, Ste. 5313 Oakland, CA 94612-0243 (510) 238-3721	For date stamp.
		PM 3:51  <b>TENANT PETITION</b>

**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name <i>Sherri Pacheco</i>	Rental Address (with zip code) <i>6518 Outlook Avenue #1 Oakland CA 94605</i>	Telephone:  Email:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) <i>Kevin Newsome</i>	Mailing Address (with zip code) <i>484 Lakepark Avenue #600 Oakland, CA 94618</i>	Telephone: Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 4

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input checked="" type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.

X	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
X	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
X	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
X	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

**II. RENTAL HISTORY: (You must complete this section)**

Date you moved into the Unit: December 2, 2012 Initial Rent: \$ 850 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 11/28/2019. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes  No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>11/28/2018</u>	<u>1/1/2019</u>	<u>\$ 1000</u>	<u>\$ 1210</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>1/1/2017</u>	<u>2/1/2017</u>	<u>\$ 989</u>	<u>\$ 1000</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>12/1/2016</u>	<u>1/1/2017</u>	<u>\$ 927</u>	<u>\$ 989</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>10/2014</u>	<u>11/2014</u>	<u>\$ 900</u>	<u>\$ 927</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>lease</u>	<u>5/2013</u>	<u>\$ 850</u>	<u>\$ 900</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

no or about  
no or about  
on or about



\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

*Property owners added my signature to a new lease without my consent.*

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

*Skerrri A. Pacheco*  
Tenant's Signature

*February 21, 2019*  
Date

[Empty rectangular box]

[Empty rectangular box]

**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

**If you want to schedule your case for mediation, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

This form must be **received** at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, 250 Frank H. Ogawa Plaza, Ste. 5313, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; or through the **RAP Online Petitioning System:** <https://apps.oaklandca.gov/rappetitions/Petitions.aspx>. For more information, call: (510) 238-3721.

### **File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

## **VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner  
 Pamphlet distributed by the Rent Adjustment Program  
 Legal services or community organization  
 Sign on bus or bus shelter  
 Rent Adjustment Program web site  
 Other (describe): \_\_\_\_\_

CASE NO. T 19-0202

RC/BC



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**  
P.O. Box 70243  
Oakland, CA 94612-0243  
(510) 238-3721

RE For date stamp.  
CITY OF OAKLAND  
ARBITRATION PROGRAM

2019 AUG -7 PM 2:24

**PROPERTY OWNER**  
**RESPONSE**

**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your response being rejected or delayed.

**CASE NUMBER T - 19-0202**

Your Name NICOLAS B. DONNELLY CLAIRE P. STJOHN	Complete Address (with zip code) P.O. BOX 296 RUNNING SPRING, CA 92382	Telephone:  Email:
Your Representative's Name (if any) KEVIN NEWSOME DBA AYS MANAGEMENT  *PROPERTY MANAGER	Complete Address (with zip code) 484 LAKE PARK AVE #600 OAKLAND CA 94610	Telephone: 5... Email:
Tenant(s) Name(s) SHEPPI PACHECO	Complete Address (with zip code) 6518 OUTLOOK AVE #1 OAKLAND	
Property Address (If the property has more than one address, list all addresses) 6518 OUTLOOK AVE 1 OAKLAND CA 94605		Total number of units on property  4

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 00206904  
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes  No  APN: D57A-2754-010-02  
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Date on which you acquired the building: 03/05/18.

Is there more than one street address on the parcel? Yes  No

Type of unit (Circle One): House / Condominium / Apartment room, or live-work

**I. JUSTIFICATION FOR RENT INCREASE** You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
1/1/2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are justifying additional contested increases, please attach a separate sheet. - SEE NOTICE BANK CALCULATION TENANT LEASE (SEE EXHIBIT 1 THRU 5)

**II. RENT HISTORY** If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on 12/2/2012  
\* AS PER LEASE

The tenant's initial rent including all services provided was: \$ 1100 / month.  
\* AS PER LEASE

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?  
Yes  No  I don't know

If yes, on what date was the Notice first given? 11/28/2018

Is the tenant current on the rent? Yes  No

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
11/28/2018	1/1/2019	\$ 1100	\$ 1210	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

### III. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.

On the day the petition was filed, the tenant petitioner was a resident of a motel, hotel, or boarding house less than 30 days.

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.

The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

### IV. DECREASED HOUSING SERVICES

If the petition filed by your tenant claims **Decreased Housing Services**, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position. — NO DECREASE IN SERVICES, LAUNDRY ROOM MACHINES WERE REPAIRED / REPLACED

### V. VERIFICATION

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

[Signature]  
Property Owner's Signature

AUGUST 3, 2019  
Date

**IMPORTANT INFORMATION:**

**Time to File**

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

**File Review**

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

**Mediation Program**

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

**If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign below.**

I agree to have my case mediated by a Rent Adjustment Program Staff member at no charge.

*[Handwritten Signature]*

Property Owner's Signature

*[Date Stamp]* AUG 3, 2019

Date



# AYS Management

## THIRTY-DAY NOTICE OF INCREASE IN RENT

November 28, 2018

Sherri Pacheco  
6518 Outlook Ave. # 2  
Oakland, Ca 94605

and all other persons in possession of these premises located at:

**6518 Outlook Ave #2  
Oakland, Ca 94605**

### PLEASE TAKE NOTE THAT:

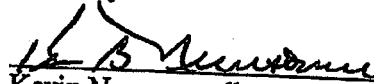
Your current rent of \$1,100.00, is increased by the banking limit this year in accordance with the City of Oakland Housing Residential Rental and Relocation Broad as follows:

The 3.4% annual adjustment approved by City Council for 2018. Section 10.5.1 of the Residential Rent Adjustmeent Programs allow a maximum increase of three (3) times the current city approved rent increase (3.4%) or a maximum increase of 10%.

The total increase in rent is \$110.00 your new apartment rent is \$1,210.00 effective January 1, 2019. As always, rent is due the first of the month and delinquent if received after the 5<sup>th</sup> of the month.

The city council passed a rental registration ordinance. The cost \$68 of per annum per unit, of which ½ has been charged to you, the tenant. Your bill for \$34 will be due January 1, 2019

Sincerely

  
Kevin Newsome dba AYS Management

11/28/18  
Date

AYS Management  
2717 A San Pablo Avenue, Berkeley Ca 94702  
\* 510-361-0688 (Office)\*510-373-6030(Fax) \* 510-708-0165 (Cell)  
ayspropertymanager@gmail.com

000063

RESIDENTIAL LEASE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU SIGN IT

RECEIPT IS HEREBY ACKNOWLEDGED by JESSIE GUTTON hereinafter called MANAGER from Sherri Pacheco. Rent to be \$1,100.00 per month, payable in advance on the FIRST (1st) day of the month. A late charge of 10% of rent will be charged if the rent, in full, is not received by the 5th day of the month. Rent at 6518 Outlook Avenue, Apt. 2, Oakland, CA 94619.

Agreed \_\_\_\_\_

THIS LEASE AGREEMENT IS FOR A PERIOD OF ONE YEAR.

THIS LEASE HAS AN ANTI-WAIVER CONDITION WHICH ALLOWS OWNER TO COLLECT LATE FEES ON AN INTERMITTANT OR STATIC BASIS. No waiver by either part of the provisions herein shall be deemed to have been made unless expressed in writing and signed by all parties to this Rental Agreement.

Understood \_\_\_\_\_

IT IS AGREED THAT NO OTHER CHILDREN OR ADULTS will reside or visit for more than fourteen (14) days without specific written agreement by the OWNER. Violation of the agreement is cause for eviction. The apartment is not to be sub-leased to anyone or occupied by anyone else without owner's approval.

Agreed \_\_\_\_\_

AT THE TIME OF MOVE IN you agree that all plumbing and appliances are in working condition, you agree that if any of these items stop working you are responsible for whatever the cost of repairs may be.

Agreed \_\_\_\_\_

IN CONSIDERATION HEREOF AND FOR THE USE AND OCCUPANCY OF THESE PREMISES, THE TENANT AGREES:

- To maintain said premises in a clean, orderly and law abiding manner and to keep the area in front of and around your apartment thereof free of debris and or material that may become unsightly or a detriment to the appearance of said premises.
- To make no alterations or redecorations of any kind to the dwelling without the prior written consent of the Owner.
- Cable is paid by the tenant.
- To pay the cost of all repairs for any damage done to said premises, and pay the cost of any cleaning of said premises which Owners may consider necessary.
- To keep no pets on the premises without specific written approval
- This space is rented to 1 adult only. You are in violation of the agreement if you have a guest (including relatives) staying in your unit for more than 14 days/nights.
- To be responsible for the behavior of all guests (including relatives) that may come to your home.
- To be considerate of all people living in the building particularly the tenants living downstairs.
- To report the need for any repair immediately even if the repair is the responsibility of the tenant.
- To keep the floors and windows clean at all times.
- To give a 30 DAY WRITTEN NOTICE BEFORE MOVING. If no written notice is given the entire portion of the rent is due and payable, AND no portion of the deposit WILL BE returned.
- To clean the unit including stove and refrigerator to the same condition it is currently in before vacating.
- To not remove batteries from the smoke alarms, and replace batteries as the need presents itself or at least two times per year.
- To secure and keep in force renters insurance (recommended).
- Tenant agrees that if Housing payments (if appropriate) are not paid due to lack of cooperation on the tenants part the tenant will pay the FULL AMOUNT OF RENT or voluntarily leave the residence.
- Tenant agrees to pay \$77.00 late fee if rent is not paid on time.
- Tenant agrees to work cooperatively with other residents in the community.
- To pay for all utility services required for your unit and not furnished by the property owner. Owner pays garbage only.



**CITY OF OAKLAND**



Department of Housing and Community Development  
 Rent Adjustment Program  
<http://rapwp.oaklandnet.com/about/rap/>

250 Frank Ogawa Plaza, Suite 5313  
 Oakland, CA 94612  
 (510) 238-3721

**CALCULATION OF DEFERRED CPI INCREASES (BANKING)**

1	Initial move-in date	2-Dec-2012	MUST FILL IN D9, D10, D11 and D14	Case No.:		CHANGE YELLOW CELLS ONLY
2	Effective date of increase	1-Dec-2018		Unit:	2	
3	Current rent (before increase and without prior cap. improve pass-through)	\$1,100.00				
4	Prior cap. imp. pass-through	\$ -				
5	Date calculation begins	2-Dec-2012				
6	Base rent when calc.begins	\$1,100				

**ANNUAL INCREASES TABLE**

Year Ending	Debt Serv. or Fair Return Increase	Housing Serv. Costs Increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
11						
10						
9						
8						
7						
6						
5				2.3%	\$ 27.30	\$ 1,214.48
4				2.0%	\$ 23.28	\$ 1,187.17
3				1.7%	\$ 19.46	\$ 1,163.89
2				1.9%	\$ 21.34	\$ 1,144.44
1				2.1%	\$ 23.10	\$ 1,123.10
0				-	-	\$1,100

**Calculation of Limit on Increase**

18	Prior base rent	\$1,100.00
19	Banking limit this year (3 x current CPI and not more than 10%)	10.0%
20	Banking available this year	\$ 110.00
21	Banking this year + base rent	\$ 1,210.00
22	Prior capital improvements recovery	\$ -
23	Rent ceiling w/o other new increases	\$ 1,210.00

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases...
Starting on February 1, 2017, an owner must petition the RAP for any rent increase...
Contesting a Rent Increase: You can file a petition with the RAP to contest unlawful rent increases...
If you contest a rent increase, you must pay your rent with the contested increase until you file a petition.
Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22)
Oakland charges owners a Rent Program Service Fee per unit per year.
Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords
The owner \_\_\_ is \_\_\_ is not permitted to set the initial rent on this unit without limitations

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit \_\_\_\_, the unit you intend to rent.
Smoking (circle one) IS or IS NOT permitted in other units of your building.
There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant's signature)

此份屋崙 (奧克蘭) 市租客權利通知書附有中文版本。請致電 (510) 238-3721 索取副本。
La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## **HEARING DECISION**

**CASE NUMBER:** T19-0202, Pacheco v. Newsome  
**PROPERTY ADDRESS:** 6518 Outlook Avenue, #1, Oakland, CA  
**DATE OF HEARING:** October 17, 2019  
**DATE OF DECISION:** January 21, 2020  
**APPEARANCES:** Sherri Pacheco, Tenant  
Xavier Johnson, Tenant Representative  
Kevin Newsom, Agent for Owner

### **SUMMARY OF DECISION**

The tenant's petition is granted. The legal rent for the unit is set forth in the Order below.

### **CONTENTIONS OF THE PARTIES**

The tenant filed a petition on February 21, 2019, contesting a rent increase served on November 28, 2018, increasing the rent from \$1,000 to \$1,210 a month, effective January 1, 2019. The tenant also contested all other rent increases she had been given since moving into the unit in December of 2012 and claimed that her original lease rent was \$850 a month.

The tenant contested the rent increases on the grounds that the CPI or banked rent increases were calculated incorrectly; the increases exceeded the CPI Adjustment and are unjustified or greater than 10%; she received a rent increase notice before the property owner received approval for such an increase; no written notice of the Rent Program (RAP Notice) was given to her with the increases she is contesting; the property owner did not give her a RAP Notice at least 6 months prior to the rent increases; the increase were not given to her in compliance with states law; and the proposed increase would exceed an overall increase of 30% over 5 years.

The tenant also claimed that she had lost services originally provided by the owner because the property owner added her signature to a new lease without her consent.

The owner filed a response to the tenant petition on August 2, 2019, claiming that the rent increase was justified based on banking and claiming that the tenant's original lease rent was \$1,100 a month.

### **THE ISSUES**

1. Did the owner establish good cause for the failure to file a timely response to the *Tenant Petition*? If not, what are the consequences?
2. When, if ever, was the form notice to tenants of the Rent Adjustment Program (*RAP Notice*) first served on the tenant?
3. What was the base rent when the tenant moved into the unit?
4. What is the allowable rent?
5. Did the tenant lose services originally provided by the owner?
6. How long is the tenant entitled to restitution for overpaid rent?
7. What, if any, restitution is owed between the parties and how does it affect the rent?

### **EVIDENCE**

Owner Response: Official Notice is taken of the file in this case. The file shows that the *Tenant Petition* and accompanying documents were sent to the owner's agent on July 2, 2019. The owner's response was filed on August 7, 2019. The letter sent to the owner's agent states:

**“YOU MUST FILE A WRITTEN RESPONSE TO THE ATTACHED TENANT PETITION(S) WITHIN THIRTY-FIVE DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR A DECISION MAY BE MADE AGAINST YOU.”** (Emphasis in original.)

Thirty-five days after July 2, 2019, is August 6, 2019. The owner's agent testified that he understood that the due date for his response was August 7, 2019, and that he filed it on that day. He did not understand that he had filed it one day late, and did not have a reason for filing it one day late because he believed it was timely.

Rental History: The tenant testified that she moved into the unit in January of 2013, at an initial rent of \$850 a month. She produced a copy of the lease that she signed with the prior owner, Jesse Guiton.<sup>1</sup> The lease was signed on December 2, 2012. The tenant also brought the original of the lease signed on that date, to compare it to the copy she produced. The original lease was compared at the Hearing, and Exhibit 1 appeared to be a true and correct copy of the lease. The lease set forth the original rent as \$850 a month and stated that after the first six months the rent would “revert back to \$900 a month.”

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<sup>1</sup> Exhibit 1. All Exhibits referred to in this Hearing Decision were admitted into evidence without objection.

The tenant also produced many of the checks she paid for rent.<sup>2</sup> She did not have all of her checks, Exhibit 2 was a compilation of those checks she was able to obtain. The documents show the following:

Check dates	Check Amount	Exhibit #	Testimony
March 2, 2012	\$850	Exh. 2, p. 1	
February 1, 2013	\$850	Exh. 2, p. 2	
April 3, 2013 and May 4, 2013	\$850	Exh. 2, pp. 3-4	
May 14, 2014	\$927	Exh. 2, p. 5	The tenant did not have an explanation for why she paid \$927 this month. She testified that she began paying \$900 a month in May of 2014, pursuant to a rent increase she received by phone.
October 2014	\$900	Exh. 2, p. 6	
November 2014	\$927	Exh. 2, p. 7	This is when the rent went up to \$927 a month.
December 2014-April 2015	\$927	Exh. 2, pp. 8-12	
June 5, 2015	\$927	Exh. 2, p. 13	
August 2, 2015-December 2016	\$927	Exh. 2, pp. 14-32	This set of checks includes a duplicate check for one month because the original check was missing.
January 2017	\$989	Exh. 2, p. 33	This payment was made after the owner increased the rent to \$989.
February 2017	\$1,000	Exh. 2, p. 34	This payment was made after the owner increased the rent to \$1,000.
March 2018	\$1,019.50	Exh. 2, p. 35	This payment was \$1,000 for rent, and \$19.50 for garbage. This is the first check the tenant produced to Lantern Advisors, who was the new owner's agent for a period of time.
April 2018	\$1,000	Exh. 2, p. 36	
May 2018	\$1,019	Exh. 2, p. 37	This payment was \$1,000 for rent, and \$19.00 for garbage
June-December 2018	\$1,000	Exh. 2, pp. 38-44	
January-February 2019	\$1,100	Exh. 2, pp. 45-46	

<sup>2</sup> Exhibit 2

March 2019- September 2019	\$1,200	Exh. 2, pp. 47-53	
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All checks noted above in Exhibit 2, pages 1-34 were made payable to Jesse Guiton, the prior owner of the property. Exhibit 2, page 35, dated March 7, 2018, is the first check the tenant produced showing payment to the new owner (through Lantern Advisors.) Starting at Exhibit 2, page 39, the tenant's checks are payed to AYS Management, the new management company operated by Kevin Newsome, the owner representative.

The tenant testified that while Ms. Guiton was the owner of the property, most of the rent increases she received were by phone. In April of 2014, she was informed by phone that her rent was going up to \$900 a month, effective May of 2014. She paid \$900 a month from May of 2014 through October of 2014. She was then notified in writing that her rent was going up to \$927 a month, effective November of 2014. (She did not specify when she received this written notice.<sup>3</sup>) The rent was then increased to \$989, effective January of 2017, which she paid for one month. Then in February of 2017, her rent was increased again to \$1,000 a month.

During the period of time the tenant was paying \$1,000 a month, the tenant was also occasionally charged additional amounts for garbage. This was noted on her rent payments as noted in the chart above.

In November of 2018, the tenant found a Thirty Day Notice of Increase of Rent on her back gate, purporting to increase her rent from \$1,100 a month to \$1,210 a month.<sup>4</sup> The tenant never paid \$1,100 a month in rent until she got that rent increase notice. When she received that rent increase notice she paid rent of \$1,100 in both January and February of 2019, because that was a 10% increase, which she thought was the allowable rent increase amount. Since March of 2019, she has been paying \$1,200 a month and intends to pay the same amount until a Hearing Decision is rendered.

The owner's agent testified that he became the manager of this property in June of 2018 and that he knows nothing of what happened before he became manager. The owners are Nicolas Donnelly and Clair St. John and they purchased the property in March of 2018. He was provided a copy of Exhibit 4, from the owners. He was informed that the document was the original lease.

The owner's agent further testified that he was the one who prepared the rent increase notice (Exhibit 3), increasing the rent from \$1,100 to \$1,210 a month. He based the \$1,100 (beginning rent) from the lease he had been given, which set forth the tenant's

<sup>3</sup> The tenant's testimony was inconsistent in that at first she said the only rent increase notice she received was for the rent increase she received to \$927 a month. She later testified that the increase to \$927 was by phone, and it was the increase to \$989 that was in writing. She later corrected herself and testified that it was the rent increase to \$927 that she received in writing. She did not have a copy of this rent increase notice.

<sup>4</sup> Exhibit 3

rent as \$1,100 a month, even though the tenant had been paying \$1,000 a month in rent.

The owner's agent further testified that the tenant was served with an Estoppel Certificate in the course of the sale, setting forth her rent at \$1,100 a month. This document was not produced to the Rent Adjustment Program.

The tenant testified that she was never served with an Estoppel Certificate.

RAP Notice: The tenant testified that she never received the *RAP Notice* from the prior owner.<sup>5</sup> She first received the *RAP Notice* in November of 2018, along with a rent increase notice she received.

The owner's agent testified that he served a *RAP Notice* with the rent increase notice served in November 2018. He has no knowledge of whether Ms. Guiton ever served the *RAP Notice* in the past.<sup>6</sup>

Lost Services: The tenant testified that the original lease from the owner, (Exhibit 1), contains certain information that was removed or changed by the prior owner. The original lease (Exhibit 1) sets forth the rent is \$850 a month, while the subsequent lease (with the same operative dates) sets forth the rent as \$1,100 a month.

The tenant received the second lease (Exhibit 4), was provided to her by the realtor for the new owner when the sale occurred. When this copy of the lease was sent to her, she did not notice that the rent amount listed was inaccurate or that the lease had been changed without her approval.

There are many differences between the original lease (Exhibit 1) and the lease admitted into evidence as Exhibit 4, although they are dated the same date. These differences include the rent amount; the amount of late charges; how payment is made; the allowance for two adults to live on the premises<sup>7</sup>; an addition of an anti-waiver in the original lease

The tenant spoke to the new owner of the property (Claire St. John) soon after she became the owner and confirmed that her current rent was \$1,000 a month. The owner agreed that she could continue to pay the \$1,000 a month she had been paying.

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<sup>5</sup> At one point during the Hearing, the tenant testified that she received the *RAP Notice* with her rent increase notice to \$927. She corrected her testimony that she meant that she got a written notice of the rent increase, not a *RAP Notice*.

<sup>6</sup> Official Notice is taken that the Owner Response also states that the first time the *RAP Notice* was served on the tenant was November 28, 2018.

<sup>7</sup> This is inconsistent in the original lease in that in one place it says that "it is agreed that two adults." The sentence is not complete. Later in the document it states "this unit is rented to one adult (family)."

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Did the owner establish good cause for the failure to file a timely response to the *Tenant Petition*? If not, what are the consequences?**

The tenant objected to the owner's participation at the Hearing because the response was filed late. The Owner Response was due on August 6, 2019, and was filed on August 7, 2019. The owner did not have a reason for filing late, other than he thought that his response was due on August 7, 2019.

While the owner's response was filed one day late, there was no prejudice to the tenant in allowing the owner's participation since the delay in response was only one day. It seems that the owner's delay was simply a slight calculation error in counting the days between the date of service and the due date. Therefore, it is determined that there was good cause for this very short delay and the owner was permitted to fully participate in the Hearing.

### **When, if ever, was the form notice to tenants of the Rent Adjustment Program (*RAP Notice*) first served on the tenant?**

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy<sup>8</sup> and together with any notice of rent increase.<sup>9</sup>

The tenant testified that the first *RAP Notice* she received was in November of 2018 with the rent increase notice sent by the new owner. There was no contrary testimony (in fact, the owner's agent agreed that this was the first *RAP Notice* and the owner's response acknowledges that the *RAP Notice* was first served in November of 2018.) The tenant's testimony was credible.

It is found that the tenant first received the *RAP Notice* in November of 2018.

### **What was the base rent when the tenant moved into the unit?**

The tenant produced a copy of the original lease from when she moved into the unit (Exhibit 1.) This lease was compared to the original at the Hearing and it was deemed to be a true and correct copy of the lease. The second lease, which was sent to the new owner by the prior owner, appears to be a fraudulent version of the lease. There is no indication that this fraud was perpetrated by the new owner, as the tenant's testimony establishes that the owner's realtor sent this lease to her back when the purchase occurred and the owner's agent testified this was the only lease he had. Therefore, in all likelihood the doctoring of the document occurred by the prior owner. In either case, the tenant established both by the original lease and the proof of payments, that her original lease rent was \$850 a month.

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<sup>8</sup> O.M.C. § 8.22.060(A)

<sup>9</sup> O.M.C. § 8.22.070(H)(1)(A)



That the original lease set forth the \$850 a month as a temporary rent is irrelevant. The Ordinance does not allow for rent increases within 12 months of the beginning of a tenancy. O.M.C. § 8.22.070(A)(1)(a). Parties cannot agree to violate the Ordinance. Therefore, the tenant's base rent was \$850 a month.

Furthermore, the issue of the alleged Estoppel Certificate is also irrelevant. This document was not produced into evidence and the tenant credibly denied receiving it. Still further, the Estoppel Certificate is not controlling. The tenant produced uncontested evidence that the rent when she moved into the unit was \$850 a month.

### **What is the allowable rent?**

When no *RAP Notice* has been served at any point until the most recent rent increase, the tenant can contest all prior increases. Further, provided she filed timely (which she did) the rent is set to the base rent at move-in and the tenant is entitled to restitution for rent paid above the base rent for three years prior to filing her petition. See *Sherman v. Michelsen*, HRRRB Decision, T12-0332. See also, O.M.C. § 8.22.090(A)(2).

Therefore, the tenant's rent is \$850 a month. (See below for restitution discussion.)

### **Did the tenant lose services originally provided by the owner?**

The tenant claimed a loss of services associated with the fraudulent copy of the lease she was provided, that changed the terms of her lease without her approval.

Other than the amount of the rent, the tenant has not established any loss to her from the owner's attempt to enforce the second, fraudulent lease. Therefore, there is no remedy for the RAP to provide other than a determination that Exhibit 1 is the actual lease between the tenant and the owner. The owner may not enforce any portion of Exhibit 4. Exhibit 1 is the controlling lease.

### **How long is the tenant entitled to restitution for overpaid rent?**

The tenant filed her petition on February 21, 2019. A Hearing was held on October 17, 2019, and a Hearing Decision is being issued in this case at the end of January of 2020, more than 11 months after the tenant first filed her petition.

In this case, the tenant contested multiple rent increases, all of which were invalid. The first contested rent increase was effective November 1, 2014, more than three years prior to the tenant's petition filing. The question then, is how long can the tenant be granted restitution?

There is no indication in the Rent Adjustment Ordinance as to how far back a tenant can seek reimbursement for claims related to rent overpayments. The Code of Civil Procedure states that the statute of limitations for "actions upon a liability created by statute, other than a penalty or forfeiture" is three years. A statute of limitations looks backward from the date a cause of action is filed, but does not limit the amount of

restitution a person may receive based on the length of time a matter takes to get resolved. Tying a tenant's recovery to the date a decision is ultimately reached, deprives the tenant of reimbursement for actionable wrongs doing during the period of processing.

There have been a variety of RAP Hearing Decisions and Appeals Decisions that have referred to a Rent Board policy to limit restitution to three years. (See *Huante v. Peinado*, T14-0232, in which the HRRRB stated that "The Hearing Decision granted restitution for decreased housing services for up to three years because the tenant did not receive the notice." The case was affirmed by the Board, but the issue of whether restitution was granted for the correct amount of time was not discussed.) See also *Barajas v. Chu*, T06-0051.

The HRRRB also referred to this matter in *Sherman v Michelson*, T12-0332. In that case the Board stated that the Hearing Officer had granted restitution "for a period of three years prior to the filing of the petition." Furthermore, again without discussing the substance of the matter, the HRRRB upheld a finding of more than 36 months of restitution in the case of *Titcomb v Vinyard-Ide*, T17-0575.

It is held that it is proper to limit the recovery of restitution to 36 months (three years) prior to the filing of a tenant petition. This may mean that a tenant is entitled to more than 36 months of total recovery because of the amount of time a case takes to be processed through the RAP. Nonetheless, the statute of limitations is still being followed, as a statute simply sets how far back a recovery can begin, but does not limit the total amount of recovery awarded.

The chart below begins the discussion of restitution starting on March 1, 2016, three years prior the filing of the tenant's case.

**What, if any, restitution is owed between the parties and how does it affect the rent?**

As noted above, the tenant is entitled to restitution for three years prior to filing her petition. She filed her petition on February 21, 2019. Therefore, she is entitled to restitution of overpaid rent beginning on March 1, 2016, which is 36 months prior to the filing of this action.

The tenant established that in March of 2016, she was paying rent of \$927, which she paid through December of 2016. She paid rent of \$989 in January of 2017, and then \$1,000 from February 2017 through December of 2018.<sup>10</sup> In January and February of 2019, she paid rent of \$1,100 and since then has been paying rent of \$1,200 a month. This Hearing Decision considers rent paid through January of 2020, as the tenant

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<sup>10</sup> Since the tenant did not argue that the few payments for garbage were not allowable payments, the \$19 and \$19.50 paid for garbage in two separate months are not considered in this Decision.

testified she would continue to pay rent of this amount until a Hearing Decision was issued.

The overpayments are shown on the below chart and totals \$8,709.

Overpayments are usually paid out over a 12 month period, but where overpayments amount to 1025% of the monthly rent, it is proper to extend the amortization period to 24 months.

OVERPAID RENT							
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total	
1-Mar-16	1-Dec-16	\$927.00	\$850	\$ 77.00	10	\$ 770.00	
1-Jan-17	31-Jan-17	\$989.00	\$850	\$ 139.00	1	\$ 139.00	
1-Feb-17	31-Dec-18	\$1,000.00	\$850	\$ 150.00	23	\$ 3,450.00	
1-Jan-19	28-Feb-19	\$1,100.00	\$850	\$ 250.00	2	\$ 500.00	
1-Mar-19	31-Jan-20	\$1,200.00	\$850	\$ 350.00	11	\$ 3,850.00	
<b>TOTAL OVERPAID RENT</b>						<b>\$ 8,709.00</b>	
RESTITUTION							
MONTHLY RENT						\$850	
TOTAL TO BE REPAID TO TENANT						\$ 8,709.00	
TOTAL AS PERCENT OF MONTHLY RENT						1025%	
AMORTIZED OVER			MO. BY REG. IS				
OR OVER 24			MONTHS BY HRG. OFFICER IS				
						<b>\$ 362.88</b>	

The tenant is entitled to begin to deduct the restitution owed from her rent after this Hearing Decision becomes final. The decision is final if no party has filed an Appeal within 20 days of the date the Hearing Decision is mailed to the parties.

**Additionally, if the owners wish to pay the tenant the restitution in one lump sum, they have the authority to do so.** If the owners pay the tenant restitution, the tenant must stop deducting the restitution.

**ORDER**

1. Petition T19-0202 is granted.
2. The tenant's rent, before consideration of restitution is \$850 a month effective immediately.
3. Due to past overpayment of rent, the tenant is owed restitution of \$8,709. This overpayment is adjusted by a rent decrease for 24 months in the amount of \$362.88 a month.

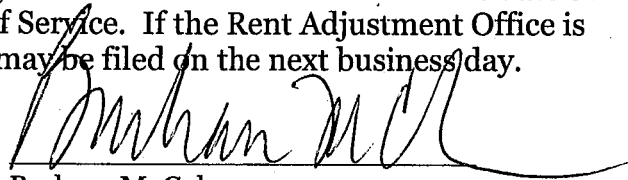
4. The tenant is entitled to reduce the rent per the restitution order after the Hearing Decision becomes final.

5. If the owners wish to, they can repay the restitution owed to the tenant at any time. If they do so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

6. The owner may otherwise be entitled to increase the rent. If the rent is increased, the tenant may continue to deduct the restitution from the new rent.

7. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: January 21, 2020

  
Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T19-0202**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Hearing Decision

**Owner**

Nicolas B. Donelly  
PO Box 296  
Running Spring, CA 92382

**Owner Representative**


Kevin Newsome, AYS Management  
484 Lake Park Avenue Unit 600  
Oakland, CA 94618

**Tenant**

Sherri Pacheco  
6518 Outlook Avenue Unit 1  
Oakland, CA 94605

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 23, 2020** in Oakland, CA.



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Raven Smith

Oakland Rent Adjustment Program

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KM/EL  
BC

2020 FEB 11 PM 3:15

 <b>CITY OF OAKLAND</b> <b>CITY OF OAKLAND</b>	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp.
	<b><u>APPEAL</u></b>	

<b>Appellant's Name</b> NICOLAS DONNELLY		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant
<b>Property Address (Include Unit Number)</b> 6518 OUTLOOK AVE, UNIT 1, OAKLAND, CA 94605-2193		
<b>Appellant's Mailing Address (For receipt of notices)</b> PO BOX 296, RUNNING SPRINGS, CA 92582		<b>Case Number</b> T19-0202
		<b>Date of Decision appealed</b>
<b>Name of Representative (if any)</b> KEVIN NEWSOME	<b>Representative's Mailing Address (For notices)</b> 484 LAKE PARK AVE #600, OAKLAND, CA 94610	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

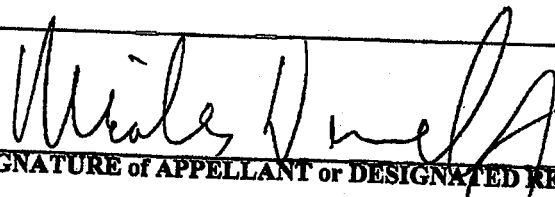
For more information phone (510) 238-3721.

- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must not exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: \_\_\_\_\_

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on February 11, 2020, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	SHERY PACHECO
<b>Address</b>	4518 OUTLOOK AVE, UNIT 1
<b>City, State Zip</b>	OAKLAND, CA 94605-2193
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	2-11-20
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

### **IMPORTANT INFORMATION:**

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

**For more information phone (510) 238-3721.**



RAP Board,

(1) We are appealing the decision made in Case No T19-0202, Pacheco vs Newsome, based on evidence submitted into the record on the same day as the hearing, giving us no opportunity to review it. We understood that evidence would be submitted no less than 14 days prior to the hearing. The decision violates federal, state or local, is inconsistent with prior decisions, and that the decision raises a new policy issue that was not addressed by the board.

(2) **The decision is not supported by substantial evidence:** We were unaware that a purported "original lease" that is in conflict with the lease we received upon purchase of the property, existed.

Based on the wording of the original complaint that "Property owners added my signature to a new lease without my consent...". The evidence we prepared was to address the issue of a possibly forged signature on an otherwise correct lease. Because the serious and materially different nature of the actual allegations were concealed from us until the hearing, we were not given an opportunity to produce evidence to address the allegations of a "doctored" lease with materially different terms.

Without evidence addressing the actual allegations raised during the hearing the decision is based on evidence which is entirely one sided. Since no reasonable mind would make a decision relying on evidence provided to support a single conclusion without first determining the availability of evidence in support of alternative conclusions, the evidence not substantial.

Evidence is required to be submitted no less than 14 days prior to the hearing. Note that even though the hearing was delayed from the originally scheduled date of Oct. 14<sup>th</sup> to Oct. 17<sup>th</sup>, the evidence was still not submitted in advance. Without proper disclosure of the evidence, which is serious in nature and tends to support a large restitution in favor of our tenant, we did not have time to prepare appropriate evidence in our favor or collect testimony.

Without time to review said evidence, there was no opportunity to reach out to the previous owner, who may be able to shed light on this situation. We have reached out to the previous owner, who has said she is reviewing her records, however the appeal timeline is not adequate to gather her testimony.

2 We also object to the lease in our possession being referred to by the Rent Adjustment Program decision as a "forged lease" as determinations of fraud are not within the jurisdiction of the RAP, and cannot be fairly determined without information from the previous owner of the building, who drafted the lease.

The lease in the tenant's possession indicates that "THIS APARTMENT IS LEASED TO Sherri A Pacheco only. There will be no 'live ins' allowed and no visitors for more than 14 days as stated below."

It appears that the conflicting sentence fragment "IT IS AGREED THAT TWO ADULTS" is remainder boilerplate that is nonsensical and should be disregarded. The lease also states "RECEIPT IS HEREBY ACKNOWLEDGED by JESSIE GUITON, hereinafter called Owner and SHERRI A. PACHECO herein called Tenant," with no other tenants listed. Additionally, the lease further clarifies that "This unit is rented to one adult (family). You are in violation of this agreement if you have a guest (including relatives) staying in your home for more than 14 days." The "(family)" verbiage indicates that along with one adult, there may be minor tenants as provided by RAP regulations. We do not waive our right to enforce this

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language, and if the RAP is holding that this is the correct first page of the lease, then we are obligated to pursue its enforcement.

3 Furthermore, we have been harmed by the withholding of this lease by the tenant if it is in fact the correct lease. Our understanding is that the tenant has been materially in breach of the terms of the lease she holds for the period we have been in possession of the property.

The Hearing Officer includes the determination in the decision that there is "the allowance for two adults to live on the premises," which we dispute, and would have disputed during the hearing in detail as per above, had we been given the opportunity to review the evidence presented against us as is required.

We are also concerned that the tenant was aware of the allegedly fraudulent lease at the time of the sale, but this was never disclosed to us or to our agent. We question why, a year after the discrepancy came to Ms. Pacheco's attention, the lease has become an issue.

Testimony from the previous owner would be extremely helpful in this regard, as well.

**The decision violates federal, state or local law:** We are also appealing the decision because the decision violates federal, state or local law.

At the time of the purchase, rents paid were \$1,000 on this unit, and the rent amount determined by the board's decision is \$850, a -15% increase in return since March, 2018 when we purchased the property. Since that time, the constitutionally required CPI increases have been 3.4% + 5 ½ \* 3.5% (1.46% approximately). Since purchase, the time-adjusted rate of return is -19.85 percent below the par rate required by the way the RAP interprets the constitutional requirements of fair return. We assume in this analysis that the tenant is made whole for previous RAP violations via the payment of appropriate restitution. Further, the current ownership have not waived their constitutional rights and have followed in good faith the RAP regulations during our ownership tenure.

We purchased the building based on a value set by present value of future rents collected at the then current rate. The appraisal used the rents being paid at the time, which means that the 2014 base year NOI is not relevant to our fair return rate, and because the value was set by the 2018 rents, which have not been invalidated by the hearing decision.

Although the successor owner may take on liabilities, liabilities due to fraud on the part of the seller are not taken on by the successor. Specifically the Uniform Fraudulent Transfer Act prohibits a seller from escaping liability from a debt via fraud. In this case the previous owner has apparently done just that according to this decision, as the we, the new owners, now find ourselves paying this debt, while the previous owner has their price which was calculated and agreed before the fraud was uncovered. Because of the fraud, our constitutional right to the rate of return on the price we paid in good faith remains protected.

An appeal hearing would provide time to present complete arguments on this complicated issue.

**The decision raises a new policy issue that has not been addressed by the board and is inconsistent with prior decisions:** Generally with regards to Decreased Housing Services, the tenant is in possession of information that the ownership does not have regarding the state of affairs and because of this

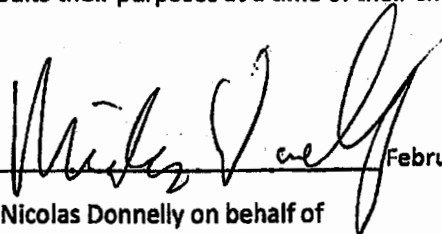
imbalance of information, the tenant is therefore required to notify ownership in order to be eligible for restitution regarding Decreased Housing Services. Restitution for overpaid rents is enforced to a different standard, because the presumption is that the landlord holds all the information and awareness regarding the violation. Burdens of proof and presumptions are aligned accordingly.

However, since the tenant was in possession of the information regarding what the hearing has decided as the true lease, since they testified that there was another lease that was being used that they were aware of, and because they signed an estoppel which memorialized the invalid rent rate while editing the estoppel according to the alternate lease in their possession, the standard of behavior regarding loss of services should have obtained, with the commensurate burden of action upon the tenant to notify ownership of the problem. We have had extensive contact and worked closely with our tenants throughout the nearly two years of our ownership, and the lease was never shared with us until the day of the hearing.

The enforcement of a presumably incorrect/invalid and financially unfavorable lease does not constitute the loss of services in proportion to the valid rate to the tenant on an ongoing basis. The tenants are required to report loss of services failed to report this has been upheld and furthermore, the timing of this notification is important to the determination of the hearing and in terms of amount of damages awarded. See Decision T14-0560, Blount et al. v MPM Property Mgt.

See also Cutts v Eagle Investments, timeliness of reporting is a requirement in terms of decreased services.

The late enforcement of this agreement that we were unaware of has denied us the opportunity to enforce other terms of that agreement while simultaneously assuming liability for a contract we didn't know existed. We argue a different standard should be applied for restitution in this case. Parties to a contract are not allowed to privately maintain two versions of a contract and produce the one that best suits their purposes at a time of their choosing.

  
February 11, 2020  
Nicolas Donnelly on behalf of

Nicolas B Donnelly and Claire St John, owners of 6518 Outlook Ave, Oakland, CA

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**CITY OF OAKLAND  
BUSINESS TAX CERTIFICATE**

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

**ACCOUNT NUMBER**  
00206904

**DBA**

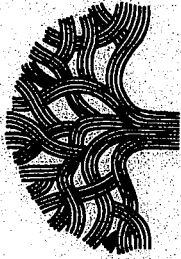
**DONNELLY NICOLAS B & STJOHN CLAIRE P**

**BUSINESS LOCATION**

6518 OUTLOOK AVE  
OAKLAND, CA 94605-2193

**BUSINESS TYPE**

M Rental- Apartment



**EXPIRATION DATE**

12/31/2020



**DONNELLY NICOLAS B & STJOHN CLAIRE P**  
PO BOX 296  
RUNNING SPRINGS, CA 92382-0241

A BUSINESS TAX CERTIFICATE IS REQUIRED FOR EACH BUSINESS LOCATION AND IS NOT VALID FOR ANY OTHER ADDRESS.

ALL OAKLAND BUSINESSES MUST OBTAIN A VALID ZONING CLEARANCE TO OPERATE YOUR BUSINESS LEGALLY. RENTAL OF REAL PROPERTY IS EXCLUDED FROM ZONING.

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DONNELLY NICOLAS B & STJOHN CLAIRE P

Business License Online Renewal 

PRINT THIS PAGE FOR YOUR RECORD

Your business license renewal has been successfully submitted. You will receive a link to print your business license shortly. Please allow up to 10 working days. If you have any questions, please contact the Business Tax office at (510) 238-3704. Thank you. Business Tax Office City of Oakland

Submission Date 1/12/2020

Confirmation # 143725

Account Information

Account # 00206908  
Expire Date 12/31/2020  
Name DONNELLY NICOLAS B & STJOHN CLAIRE P  
Address 6518 OUTLOOK AVE  
City OAKLAND  
Phone (707) 803-9077

Summary

STD	Input Amount
Total # of units per Alameda County Records:	4 \$404.00
<b>Total Due</b>	<b>\$404.00</b>

Payment Information

Payment Amount \$404.00

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City of Oakland  
250 Frank H Ogawa Plaza, Suite 1320  
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Hours:  
8:00 AM-4:00 PM  
Monday, Tuesday, Thursday, Friday

9:30 AM-4:00 PM Wednesdays.

